

Appl. No. 10/033,860  
Amdt. dated Nov. 25, 2003  
Reply to Office Action of Aug. 29, 2003

### REMARKS/ARGUMENTS

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

#### **In the Claims**

Claims 1 – 2 and 4 – 24 are presented for the Examiner's consideration.

Claim 1 has been amended to incorporate the limitation of claim 3 that the nonwoven structure also comprises superabsorbent. Claim 3 has been cancelled. The dependency of claim 4 has been amended as a result of the cancellation of claim 3. No new matter has been added.

#### **Summary of the Invention**

This invention relates to a nonwoven structure containing superabsorbent and binder fibers where the binder fibers contain an energy receptive additive. When this additive is subjected to dielectric energy, the fiber is rapidly heated. This rapid heating is advantageous for bonding of the nonwoven structure in high-speed industrial application.

#### **Regarding Examiner's Rejections**

##### **1. Rejection for anticipation by or obvious over Kerawalla**

By way of the Office Action mailed August 29, 2003, Examiner Torres-Velazquez rejected claims 1 - 2, 4 - 10, and 12 - 16 under 35 U.S.C. § 102(b) as allegedly being anticipated by or, in the alternative, allegedly being obvious under 35 U.S.C. § 103(a) to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Kerawalla (WO 91/19036). This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

Kerawalla teaches the use of bicomponent binder fibers, including sheath-core bicomponent binder fibers where the sheath of the fiber contains an EMR (electromagnetic radiation) susceptor (see page 8, lines 1-3).

Claim 1 of the present invention claims a nonwoven structure comprising superabsorbents and binder fibers. Claims 2, 4 - 10, and 12 - 16 all depend on claim 1 and thus contain all the limitations of claim 1. Kerawalla does not teach the use of superabsorbents with such binder fibers.

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Therefore, because Kerawalla fails to disclose each and every element of Applicants' claims as amended, Applicants respectfully submit that Kerawalla does not anticipate claims 1 - 2, 4 - 10, and 12 - 16 in the sense of 35 U.S.C. §102(b) and the rejection should be withdrawn.

Additionally, Examiner Torres-Velazquez contends that in the alternative to being anticipated by Kerawalla, the claimed oxidation property or the dielectric loss of claims 8 -10 would be reasonably presumed as inherent based on the Examiner's contention that the structure of Kerawalla is substantially identical to that of the present invention. *In re Best*, 195 USPQ 430, 433 (CCPA 1977).

However, as discussed above, claims 1 - 2, 4 - 10, and 12 - 16 include the limitation that the nonwoven structure of the present invention comprises superabsorbent along with the binder fibers. As Kerawalla fails to teach the use of superabsorbents, the structure of Kerawalla cannot be said to be substantially similar to the present invention, thus the claimed oxidation and the dielectric loss properties of the present invention cannot be presumed to be inherent in Kerawalla.

Because Kerawalla fails to teach all of the claim limitations of claims 1 -2, 4 - 10, and 12 - 16 the *prima facie* case for obviousness has not been established. Applicants respectfully submit that claims 1 - 2, 4 - 10, and 12 - 16 are not obvious in the sense of 35 U.S.C. §103(a) in view of Kerawalla and the rejection should be withdrawn.

## **2. Rejection for obviousness by Kerawalla in view of Gindrup et al.**

By way of the Office Action mailed August 29, 2003, Examiner Torres-Velazquez rejected claim 11 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Kerawalla (WO 91/19036) in view of Gindrup et al. (U.S. Patent No. 5,786,785). This rejection is respectfully traversed to the extent that it may apply to the present claims.

Claim 11 of the present invention is dependent on claim 1 which claims a nonwoven structure comprising superabsorbents and binder fibers. Neither Kerawalla nor Gindrup et al. teaches the use of superabsorbents with such binder fibers.

Because Kerawalla in view of Gindrup et al. fails to teach all of the claim limitations of claim 11, the *prima facie* case for obviousness has not been established. Therefore, Applicants respectfully ask that the obviousness rejection of claim 11 under 35 U.S.C. § 103(a) be withdrawn.

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### **3. Rejection for obviousness by Kerawalla in view of Goldman et al.**

By way of the Office Action mailed August 29, 2003, Examiner Torres-Velazquez rejected claims 3 and 17 - 24 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Kerawalla (WO 91/19036) in view of Goldman et al. (U.S. Patent No. 5,562,646). This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

Kerawalla teaches nonwoven structures with binder fibers containing EMR susceptors along with natural fibers, but it does not teach the use of superabsorbent. Goldman et al. teaches absorbent members useful in containment of body fluids in which at least one region containing hydrogel-forming absorbent polymer (superabsorbent). (See Abstract). Examiner Torres-Velazquez contends that it would be obvious to one of ordinary skill in the art to provide the nonwoven structure of Kerawalla with superabsorbent materials of Goldman et al.

The present invention incorporates by reference the disclosure of U.S. Patent Application Serial No. 10/034,021 entitled ABSORBENT STRUCTURES HAVING LOW MELTING FIBERS by J. Workman et al. (attorney docket No. 15,708B), filed contemporaneously with the present invention on December 20<sup>th</sup>, 2001 (see present invention page 7, lines 6 -16). Workman et al. teaches that use of microwave energy to heat binder fibers in a nonwoven structure containing superabsorbents requires careful control. The use of microwave energy in the presence of natural fibers and superabsorbents can result in thermal damage and fire without such proper control (see Workman et al. at page 13, lines 8 - 18).

Due to the potential for fire, it would not be obvious to one skilled in the art to combine the nonwoven structure of Kerawalla with the superabsorbents of Goldman et al. Therefore, Applicants respectfully ask that the obviousness rejection of claims 3 and 17 - 24 under 35 U.S.C. § 103(a) be withdrawn.

### **4. Provisional rejection under double-patenting over claims of copending application**

By way of the Office Action mailed August 29, 2003, Examiner Torres-Velazquez provisionally rejected claims 1 - 4 and 8 - 24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 4 and 8 - 29 of copending Application No. 10/034,021. This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

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The present application and U.S. Application No. 10/034,021 are pending. Notwithstanding the provisional obviousness-type double patenting rejection, allowable subject matter has not been indicated in either of these applications. Where a provisional rejection under the judicially created doctrine of obviousness-type double patenting is made between two or more applications, M.P.E.P. §804(l)(8) states that "[i]f the 'provisional' double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the 'provisional' double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent." It is not evident which of the pending applications will become allowable first. Therefore, any action by Applicants with regard to this provisional rejection is premature.

In response to the Examiner's assertion that claims 1 - 4 and 8 - 24 are directed to an invention not patentably distinct from claims 1 - 4 and 8 - 29 of commonly assigned copending U.S. Application Nos. 10/034,021, Applicants hereby state that U.S. Application Nos. 10/033,860 and 10/034,021 were, at the time the invention of Application No. 10/033,860 was made, subject to an obligation of assignment to Kimberly-Clark Worldwide, Inc.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (770) 587-8096.

Respectfully submitted,

ABUTO ET AL.

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I, Nathan Hendon, hereby certify that on November 25, 2003, this document is being sent by facsimile to the United States Patent and Trademark Office, Technology Center 1700, "Before Final" facsimile machine at 703-872-9310.

By: 

Nathan Hendon